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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/738,427	12/17/2003	Joel Morganroth	D5859-00005CIP	8208

8933 7590 12/27/2006  
DUANE MORRIS, LLP  
IP DEPARTMENT  
30 SOUTH 17TH STREET  
PHILADELPHIA, PA 19103-4196

EXAMINER
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LAYNO, CARL HERNANDZ

ART UNIT	PAPER NUMBER
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3766

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/27/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/738,427

Applicant(s)

MORGANROTH, JOEL

Examiner

Carl H. Layno

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-18 and 20-54 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-18, 20-42, 44 and 46-54 is/are allowed.
- 6) ☒ Claim(s) 1 and 4-6 is/are rejected.
- 7) ☒ Claim(s) 2, 3, 7, 8, 43 and 45 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 12/03, 8/04, 10/04, 10/05.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. Acknowledgment is made of applicant's preliminary amendment, which was received by the Office on October 6, 2004.

2. Claims 9 and 19 are canceled. Claims 1-8, 10-18, and 20-54 are active.

#### ***Priority***

3. Acknowledgment is made of applicant's claim for priority filing as a Continuation-In-Part (CIP) of U.S Patent Application Serial No. 10/045,843, filed January 10, 2003, now U.S. Patent No. 6,708,057.

#### ***Information Disclosure Statement***

4. Acknowledgment is made of applicant's Information Disclosure Statements (PTO-1449), which were received by the Office on December 17, 2003, August 16, 2004, August 23, 2004, October 1, 2004, and October 27, 2005.

#### ***Drawings***

5. Applicant's formal drawings were received by the Office on December 17, 2003. These drawings have been approved by the Examiner.

#### ***Specification***

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6. The disclosure is objected to because of the following informalities:

-p.1, lines 1-4 of the specification, the status of U.S Patent Application No. 10/045,843 should be updated to reflect the fact that it is now U.S Patent No. 6,708,057.

Appropriate correction is required.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1, 4, and 5 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27, 29, and 28, respectively, of U.S. Patent No. 6,708,057. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the method steps for processing ECG signals recited in claims 1, 4, and 5 are resident within claims 27-29 of the '057 patent.

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9. In addition, claim 6 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 7, and 10 of U.S. Patent No. 6,708,057. Although the conflicting claims are not identical, they are not patentably distinct from each other because the steps of “receiving digital ECG data”, “measuring at least one interval”, providing said ECGs”, “receiving digital evaluation data”, and “automatically flagging” are resident in claims 1, 7, and 10 of the ‘057 patent.

*Allowable Subject Matter*

10. Claims 2, 3, 43, 7, 8, and 45 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. Claims 10-18, 20-42, 44, and 46-54 are allowed.

12. The following is a statement of reasons for the indication of allowable subject matter:

After a thorough search, the Examiner was unable to find the combination of ECG processing method steps and system features resident in applicant’s independent claims 10, 11, 16, 20, 21, and 32; consequently, the Examiner deems these claims and their depending claims to be allowable over the prior art of record. Specifically, the Examiner could not find details pertaining to the reception of ECG duration interval data from a plurality of patients and their remote communication over a computer network to a regulatory agency processor, the automatic

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reflagging of defective ECG intervals and their re-measurement, and the recording of digital annotated ECG data using ECG trace images with identified interval points.

### *Conclusion*

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

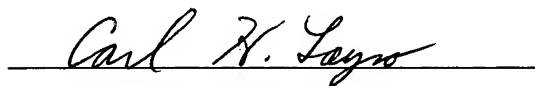
The Rosenfeld et al (US 6,804,656), Menzie et al (US 6,650,932), and de la Huerga et al (US 5,903,889) patents all recite patient information data storage systems capable of storing demographic information associated with ECGs. Unlike applicant's claimed system and method, the systems and methods of these references fail to automatically generate a query if problematic demographic information is present (claim 1). In addition, they fail to specify the ECG interval data and evaluation capabilities resident in applicant's claims.

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl H. Layno whose telephone number is (571) 272-4949. The examiner can normally be reached on 9/4/5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert E. Pezzuto can be reached on (571) 272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



CARL LAYNO  
PRIMARY EXAMINER

CHL  
12/20/2006